

AMENDED IN SENATE JANUARY 13, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 810

Introduced by Assembly Member Caballero

February 26, 2009

~~An act to amend Sections 65089.6, 65302, 66484, and 66484.3 of the Government Code, to amend Section 99150 of the Public Utilities Code, to amend Section 75.9 of the Streets and Highways Code, and to amend Sections 21101 and 35701 of the Vehicle Code, relating to land use. An act to add Section 6376.6 to the Revenue and Taxation Code, relating to taxation.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 810, as amended, Caballero. ~~Circulation and transportation element. Sales and use tax exemption: manufacturing equipment: research and development.~~

The Sales and Use Tax Law imposes a tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state, and provides various exemptions from the taxes imposed by that law.

This bill would exempt from a specified portion of those taxes, for calendar years beginning on or after January 1, 2011, the gross receipts from the sale of, and the storage, use, or other consumption of, sustainable development equipment investments of tangible personal property purchased for use by a qualified person to be used in manufacturing or other processes, as specified, and tangible personal

property purchased by a qualified person and used primarily during the research and development process for qualified research, as defined.

This bill would specify that this exemption does not apply to local sales and use taxes or transactions and use taxes.

~~Existing law requires a general plan to include a statement of development policies and, among other elements, a circulation element consisting of the general location and extent of existing and proposed major thoroughfares, transportation routes, terminals, and military airports and ports, and other local public utilities and facilities, all correlated with the land use element of the plan.~~

~~This bill would rename the circulation element the circulation and transportation element and make other technical and conforming changes.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. It is the intent of the Legislature to enact a*
2 *competitive tax policy for manufacturers by providing for partial*
3 *exemptions from state sales and use taxes for the sale of and the*
4 *storage, use, or other consumption of specified manufacturing*
5 *equipment and for sustainable manufacturing and research and*
6 *development equipment investments used in the manufacturing*
7 *process.*

8 *SEC. 2. Section 6376.6 is added to the Revenue and Taxation*
9 *Code, to read:*

10 6376.6. (a) *On and after January 1, 2011, there are exempted*
11 *from the taxes imposed by this part the gross receipts from the*
12 *sale of, and the storage, use, or other consumption in this state of,*
13 *all of the following:*

14 (1) *Tangible personal property purchased by a qualified person*
15 *for use primarily in any stage of the manufacturing, processing,*
16 *refining, fabricating, or recycling of property, beginning at the*
17 *point any raw materials are received by the qualified person and*
18 *introduced into the process and ending at the point at which the*
19 *manufacturing, processing, refining, fabricating, or recycling has*
20 *altered property to its completed form, including packaging, if*
21 *required.*

1 (2) *Tangible personal property purchased for use by a*
2 *contractor purchasing that property for use in the performance of*
3 *a construction contract for the qualified person who will use the*
4 *property as an integral part of the manufacturing, processing,*
5 *refining, fabricating, or recycling process, or as a storage facility*
6 *for use in connection with the manufacturing process.*

7 (3) *Sustainable development equipment investments of tangible*
8 *personal property purchased by a qualified person for use*
9 *primarily in any stage of the manufacturing, processing, refining,*
10 *fabricating, or recycling of property beginning at the point any*
11 *raw materials are received by the qualified person and introduced*
12 *into the process and ending at the point at which the*
13 *manufacturing, processing, refining, fabricating, or recycling has*
14 *altered property to its completed form, including packaging, if*
15 *required.*

16 (4) *Tangible personal property purchased by a qualified person*
17 *for use primarily during the research and development process*
18 *on qualified research.*

19 (b) *For purposes of this section:*

20 (1) *“Fabricating” means to make, build, create, produce, or*
21 *assemble components or property to work in a new or different*
22 *manner.*

23 (2) *“Manufacturing” means the activity of converting or*
24 *conditioning property by changing the form, composition, quality,*
25 *or character of the property for ultimate sale at retail or use in*
26 *the manufacturing of a product to be ultimately sold at retail.*
27 *Manufacturing includes any improvements to tangible personal*
28 *property that result in a greater service life or greater functionality*
29 *than that of the original property.*

30 (3) *“Primarily” means, for the purposes of subdivision (a),*
31 *tangible personal property used 50 percent or more of the time in*
32 *an activity described in subdivision (a).*

33 (4) *“Process” means the period beginning at the point at which*
34 *any raw materials are received by the qualified person and*
35 *introduced into the manufacturing, processing, refining,*
36 *fabricating, or recycling activity of the qualified person and ending*
37 *at the point at which the manufacturing, processing, refining,*
38 *fabricating, or recycling activity of the qualified person has altered*
39 *tangible personal property to its completed form, including*
40 *packaging, if required. Raw materials shall be considered to have*

1 *been introduced into the process when the raw materials are stored*
2 *on the same premises where the qualified person's manufacturing,*
3 *processing, refining, or recycling activity is conducted. Raw*
4 *materials that are stored on premises other than where the*
5 *qualified person's manufacturing, processing, refining, fabricating,*
6 *or recycling activity is conducted, shall not be considered to have*
7 *been introduced into the manufacturing, processing, refining,*
8 *fabricating, or recycling process.*

9 (5) "Processing" means the physical application of the materials
10 and labor necessary to modify or change the characteristics of
11 property.

12 (6) "Qualified person" means either of the following:

13 (A) A person who is primarily engaged in those lines of business
14 described in Codes 3111 to 3399, inclusive, or 5112 of the North
15 American Industry Classification System (NAICS) published by
16 the United States Office of Management and Budget, 2007 edition.

17 (B) An affiliate of a person described in subparagraph (A)
18 provided that the affiliate is a member of the qualified person's
19 unitary group for which a combined report is required to be filed
20 under Article 1 (commencing with Section 25101) of Chapter 17
21 of Part 11.

22 (7) "Qualified research" means research that meets the
23 requirements of Section 174 of the Internal Revenue Code.

24 (8) "Refining" means the process of converting a natural
25 resource to an intermediate or finished product.

26 (9) "Sustainable development equipment" means qualified
27 manufacturing or research and development equipment that meets
28 any of the following:

29 (A) Is consistent with meeting the goals and objectives of
30 compliance with greenhouse gas emissions standards as set forth
31 in Division 25.5 (commencing with Section 38500) of the Health
32 and Safety Code.

33 (B) Promotes the reduction of wasteful, inefficient, unnecessary,
34 or uneconomic uses of energy.

35 (C) Encourages the utilization of cost-effective water use
36 efficiency practices to curtail the waste of water and to ensure that
37 water use does not exceed reasonable needs.

38 (D) Promotes the utilization of recycled or reusable materials
39 in the manufacturing process.

1 (10) *“Tangible personal property” includes, but is not limited*
2 *to, all of the following:*

3 (A) *Machinery and equipment, including component parts and*
4 *contrivances such as belts, shafts, moving parts, and operating*
5 *structures.*

6 (B) *Equipment or devices used or required to operate, control,*
7 *regulate, or maintain the machinery and equipment, including,*
8 *without limitation, computers, data processing equipment, and*
9 *computer software, together with all repair and replacement parts*
10 *with a useful life of one or more years, whether purchased*
11 *separately or in conjunction with a complete machine and*
12 *regardless of whether the machine or component parts are*
13 *assembled by the qualified person or another party.*

14 (C) *Property used in pollution control that meets standards*
15 *established by this state or any local or regional governmental*
16 *agency within this state.*

17 (D) *Special purpose buildings and foundations used as an*
18 *integral part of the manufacturing, processing, refining, or*
19 *fabricating process, or that constitute a research or storage facility*
20 *used during the manufacturing process.*

21 (E) *Fuels used or consumed in the manufacturing process.*

22 (11) *“Tangible personal property” does not include any of the*
23 *following:*

24 (A) *Consumables with a normal useful life of less than one year,*
25 *except as provided in subparagraph (E) of paragraph (10).*

26 (B) *Furniture, inventory, and equipment used in the extraction*
27 *process, or equipment used to store finished products that have*
28 *completed the manufacturing process.*

29 (C) *Buildings or components of buildings used solely for*
30 *warehousing purposes after completion of the manufacturing*
31 *process.*

32 (D) *Tangible personal property used primarily in administration,*
33 *general management, or marketing.*

34 (c) *No exemption shall be allowed under this section unless the*
35 *purchaser furnishes the retailer with an exemption certificate,*
36 *completed in accordance with any instructions or regulations as*
37 *the board may prescribe.*

38 (d) *Notwithstanding any provision of the Bradley-Burns Uniform*
39 *Local Sales and Use Tax Law (Part 1.5 (commencing with Section*
40 *7200)) or the Transactions and Use Tax Law (Part 1.6*

1 *(commencing with Section 7251)), the exemption established by*
2 *this section shall not apply with respect to any tax levied by a*
3 *county, city, or district pursuant to, or in accordance with, either*
4 *of those laws.*

5 *(e) (1) Notwithstanding subdivision (a), the exemption provided*
6 *by this section shall not apply to any sale or use of property that,*
7 *within one year from the date of purchase, is either removed from*
8 *California, converted from an exempt use under subdivision (a)*
9 *to some other use not qualifying for the exemption, or used in a*
10 *manner not qualifying for the exemption.*

11 *(2) Notwithstanding subdivision (a), the exemption established*
12 *by paragraphs (1) and (2) of subdivision (a) shall not apply with*
13 *respect to any tax levied pursuant to Section 6051.2, 6051.5,*
14 *6051.7, 6201.2, 6201.5, or 6201.7 or pursuant to Section 35 of*
15 *Article XIII of the California Constitution.*

16 *(3) Notwithstanding subdivision (a), the exemption established*
17 *by paragraphs (3) and (4) of subdivision (a) shall not apply with*
18 *respect to any tax levied pursuant to Section 6051.2, 6051.5,*
19 *6201.2, or 6201.5 or pursuant to Section 35 of Article XIII of the*
20 *California Constitution.*

21 *(f) If a purchaser certifies in writing to the seller that the*
22 *property purchased without payment of the tax will be used in a*
23 *manner entitling the seller to regard the gross receipts from the*
24 *sale as exempt from the sales tax, and within one year from the*
25 *date of purchase, the purchaser (1) removes that property from*
26 *California, (2) converts that property for use in a manner not*
27 *qualifying for the exemption, or (3) uses that property in a manner*
28 *not qualifying for the exemption, the purchaser shall be liable for*
29 *payment of sales tax, with applicable interest, as if the purchaser*
30 *were a retailer making a retail sale of the property at the time the*
31 *property is so removed, converted, or used, and the sales price of*
32 *the property to the purchaser shall be deemed the gross receipts*
33 *from that retail sale.*

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**All matter omitted in this version of the bill
appears in the bill as introduced in the
Assembly, February 26, 2009. (JR11)**

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